

February 20,1998

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON APPLICATION FOR PRELIMINARY PLAT APPROVAL.

SUBJECT: Department of Development and Environmental Services File No. **L970007**

MERDIAN GLEN
Preliminary Plat Application

Location: Generally located between Southeast 240th and Southeast 238th
Place, on the eastside of 124th Avenue Southeast

Applicant: Executive Homes, Inc.
c /o Barghausen Consulting Engineers, Inc.
18215 72nd avenue South
Kent WA 98032
(425) 251-6222

SUMMARY OF DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Decision:	Approved subject to conditions (modified)

PRELIMINARY MATTERS:

Application or petition submitted:	March 4, 1997
Notice of complete application:	April 7, 1997

EXAMINER PROCEEDINGS:

Hearing Opened:	February 12,1998
Hearing Closed:	February 12,1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

Density; subdivision lots
Landscaping (street trees)
Road safety and design

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer:	Executive Homes, Inc. c/o Barghausen Consulting Engineers, Inc. 18215 72 nd Avenue South Kent WA 98032
Engineer:	Barghausen Consulting Engineers, Inc. Attn: Jeff Potter 18215 72 nd Avenue South Kent WA 98032
Location:	Generally located between Southeast 240 th and Southeast 238th Place, on the eastside of 124 th Avenue Southeast
STR:	16-22-05
Zoning:	R-6-P
Acreage:	4.6 acres
Number of Lots:	23
Density:	5 dwelling units per acre
Typical Lot Size:	Ranges from approximately 4,704 to 7,000 square feet
Proposed Use:	Single family detached dwellings
Sewage Disposal:	Soos Creek Water & Sewer District
Water Supply:	Soos Creek Water & Sewer District
Fire District:	King County Fire District No. 37
School District:	Kent High School District No. 415
Complete Application Date:	April 7, 1997

2. **Proposal.** Executive Homes, Inc. represented by Barghausen Consulting Engineers and David Halinan, attorney, (hereinafter “the Applicant”) proposes to subdivide a 4.6-acre parcel into 23 single family residential building lots. With a lot size density range between 4,704 and 7,000 square feet, the proposed development will achieve a development density of approximately 5 dwelling units per acre. This density lies within the density range authorized by the R-6 zoning classification.

3. **SEPA.** An Environmental Impact statement (“EIS”) is not required. The King County Department of Development and Environmental Services (the “Department” or “DDES”) issued a threshold determination of nonsignificance (“DNS”) for the proposed development on November 11, 1997. That is, based on its review of a variety of pertinent environmental documents, the Department concluded that the proposed development would not cause a “probable significant adverse impact” upon the environment. Some neighboring property owners, discussed later in this report, question the accuracy of such determination, but do not (and have not) raised any formal appeal. The threshold determination appeal period expired November 17, 1997.
4. **DDES Recommendation:** The Department recommends granting preliminary approval to the proposed plat of Meridian Glen, subject to 18 conditions of final plat approval. Those recommended conditions are the same as those started on pages 7 through 11 of the Department’s preliminary report to the Hearing Examiner dated February 12, 1998, EXCEPT that the Department recommends additional language be added to recommended Condition No. 8.c. That additional language, contained in Exhibit No. 18, would require public road improvements for 124th Avenue Southeast to include “construction of an Urban Subaccess Street “ extending from (internal) Road A intersection southward to the terminus of the County CIP improvements on 124th Avenue Southeast.
5. **Applicant’s position; street tree issue.** The Applicant accepts the Department’s recommendation as described in finding 4, preceding, EXCEPT that the Applicant questions the Department’s recommendation regarding the installation of the street trees as contained in recommendation No.8.f. Recommendation No.8.f requires the following improvements “according to the 1993 King County Road Standards”:

As required by KCRS 5.03, street trees should be included in the design of all road improvements.

The following findings and arguments are relevant:

- A. KCRS Section 5.03 states that street trees and landscaping “should be” incorporated into road improvements for all classifications of road. It further states that such improvements “shall be in ... coordinated” with off-street landscaping required pursuant to KCC 21.51.¹ KCRS Section 5.03 also addresses “optional” planting strips; requires (“shall”) preservation of existing trees and landscaping “where desirable”; requires placement of new trees “compatible” with other features of the environment; prohibits conflict with overhead utilities or root development of underground utilities; and, prohibits certain species. In addition, KCRS 5.03 specifies planting standards and requires contact with Metro Service planning bus routes.
- B. KCC 21A.16.050 addresses street frontage landscaping. KCC 21A.16.050.E addresses street frontage trees for single family subdivisions. It requires tree planting (“shall be”) at the rate of one tree for every 40 feet of frontage along a neighborhood collector or

¹ KCC 21.51, with adoption of KCC 21A, has been replaced by KCC 21A.16.

arterial street, but appears to require no other planting.

- C. The Applicant argues that the two provisions conflict. The Department responds by saying that the KCC 21A provision applies to exterior perimeters, whereas the KCRS provision (which is more general) may be applied to interior streets (that is, streets within the plat).
 - D. The Applicant argues that the KCC 21A provision contains mandatory language, whereas the KCRS provision is more flexible and not mandatory. For this reason, the Applicant contends that KCC 21A.16.050.E should be preferred and that the reference to KCRS Section 5.03 should be deleted.
6. **Opposition.** Four neighboring property owners appeared at the hearing to oppose the proposed development as it is presently designed. They each own large homes situated on large lots (approximately one acre each) within a short subdivision which abuts the west boundary of the subject property and which was developed by this same Applicant. They express the following concerns:
- A. **Density/Compatibility.** They dislike the five unit per acre density of the proposed development, believing that it is incompatible with their own low density development, and fearing that it will reduce their resale property values. Their own properties, as well as the subject Meridian Glen property, are classified R-6. All other property within the immediate vicinity is classified R-4, a lower density classification. In the public hearing, they sought also to challenge the adequacy of public notice regarding the Council's zoning action with respect to the subject property. However, the Examiner disallowed testimony and evidence to that point, concluding that the Council's ordinances will be presumed valid.
 - B. **Sixteen lots limit.** The KCRS limits private roads to serving no more than sixteen lots. The neighboring property owners, noting that the principal access street, 124th Avenue Southeast, is a private street contend that the proposed plat of Meridian Glen should contain no more than seven lots. The street already serves nine lots.

In making its recommendation, the Department was not unaware of this limitation. Consequently, the Department recommends that the road improvements to 124th Avenue Southeast must meet KCRS public street standards. The department recommends, further, that:

In the event that King County does not complete these requirements, the public hearing for the subdivision shall be reopened for consideration of alternative access requirements.

In order to reach northward sufficiently to provide access to Meridian Glen, additional right of way must be acquired. Some portion of that right of way is owned by the neighboring property owners who express opposition to the proposed development density.

- C. **Private agreements.** The Applicant, by virtue of the private agreements established pursuant to the development and purchase of the westerly abutting short subdivision lots, carries a 4/11th obligation to participate in maintenance of the (private) 124th Avenue Southeast. That agreement, in turn, suggest that the Applicant's abutting Meridian Glen ownership will be developed at a density comparable to the short subdivision owned by these four concerned neighboring property owners Responding to a motion by the Applicant, the Examiner ruled that the private agreements are not relevant to this review and that King county does not enforce private agreements.
7. **Department report adopted.** Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated February 12, 1998 (published January 27, 1998) are corrected and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the Examiner's report which are submitted to the King County Council..
8. **Conclusion adopted.** Any portion of any of the following conclusions which may be construed as a finding is incorporated here by reference.

CONCLUSIONS:

1. KCRS Section 5.03 and KCC 21A.16.050.E do not conflict. They don't even address the same situations. Further, KCC21A.16.050.E doesn't apply in this case because the Applicant is not developing neighborhood collector or arterial street frontage. (The County has assumed responsibility for the redevelopment of Southeast 240th Street, which abuts the south boundary of the subject property.) Because these separate provisions do not conflict and because the KCC 21A provision doesn't even apply here, these conclusions need not contain any analysis regarding which provision supersedes the other.

While expressing preference for the KCC 21A alternative, neither the Applicant nor anyone else has identified any reason why the KCRS alternative (optional as it is) should (?) not be applied in this situation. I agree with the Department's conclusion that the KCRS street tree provision is reasonable and appropriate, and will further the public interest-particularly considering the density and neighborhood character concerns raised by neighboring property owners.

2. The Department's recommendation to provide opportunity to reopen this matter administratively is a sound one, considering the unresolved concern regarding the availability of sufficient right of way to develop the access street consistent with King County public street standards. In my review, however, I notice that the Department's recommendation (recommended Condition No. 9) only addresses King County's responsibilities with respect to 124th Avenue Southeast improvements. However, the Applicant also has 124th Avenue Southeast right of way acquisition responsibility, even if actual construction is undertaken by the King County Department of Transportation. For this reason, recommended Condition No. 9 as stated below, differs from the Department's preliminary recommendation. The amendment to recommended Condition No. 9, as stated on page 8, below, will be consistent with the Department's recommended revision to Condition 8.c, which is also contained on that same page.

3. Based upon the whole record, and according substantial weight to the determination of environmental significance made by the Land Use Services Division, it is concluded that approval of this subdivision as recommended below would not constitute a major action significantly affecting the quality of the environment. All evidence of environmental impact relating to the proposed action and reasonable alternatives to the proposed action have been included in the review and considerations of this action.
4. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and polices of the King County.
5. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provisions for the public health, safety and general welfare and for drainage ways, streets, other public ways, water supply, and sanitary wastes; and it will serve the public use and interest.
6. The conditions recommended in the Land Use Services Division's Preliminary Report as amended below are in the public interest and are reasonable requirements.

DECISIONS:

APPROVE the proposed preliminary plat of MERIDIAN GLEN, as revised and received January 20, 1998, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall meet the minimum density of the R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 1187, as amended (1993 King County Road Standards).
6. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of chapter 17.08 of the King County Code. If all lots are 35,000 square feet in size or more, or if the subdivision is outside an

Urban Growth Area and is developed at a density no greater than one residential building lot per five (5) acres, or a cluster development outside an Urban Growth Area with lots under 35,000 square feet in size and offsetting permanent open space and is developed at a density no greater than one residential building lot per five (5) acres, the subdivision is exempt per KCC 17.08.030.

7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on the file with DDES and/or the Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file.”
 - d. The applicant has received approval for the requested diversion of surface water (Variance File L97V0093). The conditions for variance approval shall be satisfied during design and approval of the project engineering plans.
 - e. Storm water runoff control shall be provided using detention designs outlined in the drainage manual and more restrictive designs required by conditions of the approved drainage variance. As indicated in the variance approval, the release rate may not exceed the available capacity of the downstream conveyance for all storms to the 100-year, 24-hour event. Biofiltration of storm water is also required for water quality enhancement. The size of the proposed drainage tracts may have to increase to accommodate the required detention storage volumes and biofiltrations facilities. the runoff control facilities shall be located in a separate tract and dedicated to King County.
 - f. The final drainage plats and analysis shall evaluate the threshold requirements from Special Requirement No. 5 in the drainage design Manual and determine if a wet pond is required. Page 10 in the King County Sensitive Area Folio identifies a class 2 stream located within one mile of the project, therefore, if the amount of impervious surface

subject to vehicular use exceeds 1 acre, a wet pond will be required.

8. The following road improvements are required for the subdivision to be constructed according to the 1993 King County Road Standards.
 - a. Road A shall be improved as an urban subaccess street.
 - b. Road B shall be improved as an urban minor access street.
 - c. Thirty feet of road right-of-way for 124th Ave SE shall be dedicated along the west property line and extending southward from its intersection with proposed internal street "Road A" to SE 240th Street. Public road improvements for 124th Avenue Southeast shall include construction of an Urban subaccess street extending from the Road A intersection south to the terminus of the County CIP improvements on 124th Avenue Southeast.
 - d. The portion of right-of-way for 124th Avenue SE which extends north from the Road A intersection, shall be improved as a joint use driveway with 18 feet of paved surface and controlled drainage. During review of future development applications, this right-of-way may be improved as a full width road if determined necessary for traffic/neighborhood circulation. Until such time that a public road is improved, the joint use shall be privately maintained by the serving lots.
 - e. Twenty feet of right-of-way shall be dedicated along the frontage of SE 240th Street to provide a total of 50 feet from centerline. No road improvements are required within this right-of-way.
 - f. Street trees shall be included in the design of all road improvements, consistent with KCRS 5.03 standards.
 - g. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
9. Road improvements to 124th Avenue SE are currently proposed by King County as part of the capital improvements project on SE 240th Street. The required road widening, sight distance improvements, and acquisitions of right-of-way on 124th Ave SE will satisfy requirements for public road access to the proposed subdivision. See also, Condition No.8.c, above. These road requirements shall be complete to the satisfaction of DDES prior to recording the subdivision. In the event that King County does not complete these requirements, the public hearing for the subdivision shall be re-opened for consideration of alternative access requirements.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council Prior to final plat recording.
11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final

plat recording or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and note shall be

placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid"; if the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.

12. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat received final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
13. There shall be no direct vehicular access to or from SE 240th Street or 124th Avenue SE from those lots which abut it, with the exception of lot 1 (124th Ave SE) and the joint use driveway (lot 12 and tax lot 67).
14. The planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners. This shall be stated on the face of the final plat.
15. The applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in KCC 21A.06.415). The delineation of such areas shall be approved by a DDES geologist. The requirements found in KCC 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading areas.
16. Suitable recreation space shall be provided, consistent with the requirements of KCC 21A.14.180 and KCC 21A.190 (i.e. sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations (minimum 6,000 square feet or greater), dimensions and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan. A fee-in-lieu of recreation space shall be provided for the remaining area (approx. 3,000 square feet) not provided on-site.
 - b. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item a., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
17. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation area(s).

18. The following conditions shall apply to implement the P-suffix conditions to this property.

- a. **Clearing and Grading.** The applicant has the option to clear the individual building envelopes during construction of the roads and utilities or upon approval of the individual building permit. If the building envelopes are to be cleared during road and utility construction, the individual building envelopes shall be shown on the engineering plans and limited to the following maximum area (1991 Soos Creek Community Plan, page 148):

- | | | |
|----|------------------------------|--------------------------|
| 1) | Lot Size (in sq. ft.) | Building Envelope |
| | Less than 5,000 | 55% of the lot size |
| | 5,000-9,000 | 45% of the lot size |
| | 9,001-15,000 | 35% of the lot size |
| | Greater than 15,000 | 5,000 square feet |
- 2) The clearing limits for each building envelope shall be clearly marked or flagged on each lot and inspected prior to any clearing.

b. **Significant Tree Retention.** The applicant shall demonstrate compliance with the P-suffix conditions regarding significant tree retention prior to engineering plan approval (1991 Soos Creek Community Plan, pages 152-155).

c. **Seasonal Clearing.** Clearing and grading shall not be permitted between November 1 and March 31, unless otherwise approved by DDES (1991 Soos Creek Community Plan, pages 149-150).

ORDERED this 20th day of February, 1998.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 20th day of February, 1998, to the parties and interested persons listed on Attachment A.

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before March 6, 1998**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the

Clerk of the King County Council **on or before March 13, 1998**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Tom Bertek, and Peter Dye, representing the County; David Halinen, Jeff Potter, Donald B. Wilson, Bijan Shahir, Mathew Titus, Dwayne Herbel.

The following exhibits were offered and entered into the record:

- | | |
|----------------|---|
| Exhibit No. 1 | Department of Development and Environmental Services File No. L97P0007 |
| Exhibit No. 2 | Department of Development and Environmental Services Preliminary Report dated February 12, 1998 |
| Exhibit No. 3 | Application, submitted March 4, 1997 |
| Exhibit No. 4 | Environmental Checklist, dated March 4, 1997 |
| Exhibit No. 5 | Declaration of Nonsignificance, dated November 25, 1997 |
| Exhibit No. 6 | Affidavit of Posting indicating January 12, 1998, as date of posting and January 15, 1998, as the date the affidavit was received by the Department of Development and Environmental Services |
| Exhibit No. 7 | Plat map dated January 20, 1998 (revised) |
| Exhibit No. 8 | Land Use map 642 E & W |
| Exhibit No. 9 | Assessor maps NW/NE 21-22-05, SW/SE 16-22-05 |
| Exhibit No. 10 | SWM variance decision (File No. L97V0093) dated 9-2-97 |
| Exhibit No. 11 | Recorded short plat No. 386068 |
| Exhibit No. 12 | Deed and slope easement to King County (SE 240 th) |
| Exhibit No. 13 | Soos Creek Water and Sewer District Certificate of Water Availability issued February 6, 1998 |
| Exhibit No. 14 | Excerpt Report and Decision on Lynden Place (L97P0002), Staff Report Belmont Court (L95P0017), and Staff Report Cedar Lane (L96P0020) |
| Exhibit No. 15 | Homeowners' View of Meridian Glen submitted by Donald B. Wilson |
| Exhibit No. 16 | Statement prepared and read into hearing record by Bijan Shahir |
| Exhibit No. 17 | Draft plan for improvements to 124th |
| Exhibit No. 18 | Addition to Condition No. 8.C submitted by staff |
| Exhibit No. 19 | Letter dated February 2, 1998, from WSDOT to Hearing Examiner |

ATTACHMENT A

Dave & Eileen Brandsen
Sam Capelouto
Owen Denison
Executive Homes, Inc.
Gary and Joanne Gallagher
David L. Halinen
Dwayne Herbel
John L. Scott Land Department
Jean Lambert
Maurice McGrath
Jeff Potter
Jan Reinking
Bijan Shahir
Mathew Titus
Wash. State Dept of Transportation
Donald B. Wilson
Tom Bertek
Arlene Chan
Kim Claussen
Peter Dye
Michaelene Manion
Rich Hudson